IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7585 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes. : YES

2. To be referred to the Reporter or not?-No. :

3. Whether Their Lordships wish to see the fair copy of the judgement?-No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No. : NO

5. Whether it is to be circulated to the Civil Judge?-No. :

MUNAVAR HUSSEN MIRSAHEB SAIYED

Versus

STATE OF GUJARAT

Appearance:

MR AV PRAJAPATI for Petitioner

MR S.K. Patel, AGP, for Respondent No. 1

MR SP HASURKAR for Respondent No. 4

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 07/04/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for quashing and setting aside an order of compulsory retirement passed by the State Government on 8th of June, 1990 and for granting all consequential benefits to the petitioner.

The case of the petitioner was that he was serving as a Police Constable at Dediapada Police Station. A charge-sheet was served upon him on July 25, 1984, inter alia, alleging that without taking prior permission of the authorities, or a superior Officer, on April 19, 1984, he gave a news item to "Loksatta" (Daily) and "Gujarat Mitra" (Daily), stating that injustice had been caused to police personnel. The said act of the petitioner was in contravention of Rule 396(1) of the Gujarat Police Manual, Part I and, by doing such act, he committed misconduct and an act of indiscipline. It was also alleged that he refused to give a statement when he was asked to do so by a Circle Police Inspector, Rajpipla. The enquiry was instituted on the above two charges. The Enquiry Officer submitted his report, holding Charge No.1 as proved against the petitioner that he has given news item to the newspaper reporters. With regard to Charge No.2, viz., refusal to give statement, however, the Enquiry Officer observed that the said charge was not proved beyond reasonable doubt.

On the basis of the above report, an order was passed on 30th January, 1986 by the Disciplinary Authority, i.e. District Superintendent of Police, Bharuch, and he held that on the basis of Charge No.1 being proved, the petitioner was liable to be punished. Accordingly, one month's salary was ordered to be recovered from him.

Being aggrieved by the order passed by the Disciplinary Authority, the petitioner filed an appeal on February 11, 1986 and the said appeal was also dismissed by the Deputy Inspector General of Police, Vadodara.

When a revision Application was filed before the Inspector General and Director General of Police, the revisional authority issued an enhancement notice, asking the petitioner to show cause why the punishment should not be enhanced as he has committed gross misconduct. After hearing the petitioner, the revisional authority ordered removal of the petitioner from service by an order dated 10th of October, 1998. Against the said order, the petitioner filed the present petition. When the petition came up for hearing, the attention of the learned counsel for the petitioner was invited that a further revision was competent before the State Government. Accordingly, the petitioner was asked to approach the State Government. The State Government, by an order dated June 8, 1990, partly allowed the revision application filed by the petitioner and the order of removal was converted into compulsory retirement. The

said order is the subject matter of challenge.

Several contentions were raised by learned counsel for the petitioner. It was contended that in the facts and circumstances of the case, the order passed by the authorities are illegal, contrary to law and based on "no evidence", and, therefore, liable to be quashed and set aside.

It was submitted that even if it is assumed for the sake of argument that the allegation against the petitioner was proved, it was not of such a magnitude, which required the authorities to pass an order of compulsory retirement. At the most, the petitioner had reported to the Press that there was injustice to Police personnel. Such an act would not amount to misconduct so as to warrant compulsory retirement taking away his livelihood altogether. The order is thus arbitrary and unreasonable.

On the other hand, Mr.S.K. Patel, AGP, assisted by Mr. Hasurkar, supported the order passed by the revisional authority. It was submitted that the order was passed on the basis of evidence on record. Sufficiency or otherwise of evidence cannot be made subject matter of judicial review under Article 226 / 227 of the Constitution and the petition deserves to be dismissed. Regarding quantum, ordinarily, in exercise of extraordinary jurisdiction, this Court does not substitute its opinion for the opinion of the authority particularly when the case relates to disciplined force and action was taken by the authorities in bona fide exercise of power conferred on them.

In the facts and circumstances, in my opinion, the petition deserves to be partly allowed.

So far as the findings recorded by the authorities are concerned, in my opinion, no interference is called for. Two allegations were levelled against the petitioner. Firstly, that he had gone to the Press and gave some news item, which was published in various newspapers. Secondly, he refused to give statement when he was asked to do so. The former was held proved by the authorities, but the latter was not.

When the petition was placed for admission, rule was issued and following order was passed on 4th of April, 199.....

"... Amendment granted.
Rule. Expedited.

Mr.P.B. Majmudar, learned counsel for the petitioner states at the Bar that the present petition shall be confined only to the magnitude of the punishment imposed. Rule is issued in this petition on the basis of this statement. Mr.Majmudar further states at the Bar that in case he finally succeeds in the petition and a reduced punishment is awarded, the petitioner shall not claim any monetary benefits for the intervening period and an undertaking to this effect shall be filed by the petitioner within a period of two weeks from today. Interim relief refused .... "

It appears that the petitioner did not file an undertaking. Instead, he preferred Miscellaneous Civil Application to relieve him from filing the undertaking. The counsel, however, stated that the said application was rejected. He further stated that being aggrieved by the order passed in Miscellaneous Civil Application, a Letters Patent Appeal was filed, but it was withdrawn. The counsel further stated that another application was filed, which was also ordered to be heard along with the main matter, i.e. this Special Civil Application No.7585 of 1988 and it was stated that the petitioner can raise such contention at the time of hearing of the petition.

From the above discussion, it is clear that as on today, the order passed by the learned Single Judge at the time of admission holds the field, and is not disturbed.

In the facts and circumstances, it is clear that out of two charges, only one was proved, which relates to a news item to newspaper reporters relating to service conditions of Police personnel. In my opinion, that charge cannot be said to be of such a magnitude, which justified the respondent-authorities to compulsorily retire the petitioner from service. From the record, it is proved that the disciplinary authority was satisfied that in the light of the charge levelled and proved against the delinquent, it would be sufficient if the petitioner would be asked to refund one month's salary.

Even the appellate authority was satisfied about the order of disciplinary authority and dismissed the appeal. In my considered opinion, in the revision application filed by the petitioner against the said order, the revisional authority was not justified in issuing notice for enhancement and in removing the petitioner from service. Though in further revision application, the State Government reduced the punishment of removal to compulsory retirement of the petitioner, in the facts and circumstances, the said action was not justified.

The petition, therefore, deserves to be partly allowed and it is accordingly allowed. The order passed by the Disciplinary Authority and confirmed by the appellate authority are hereby restored and the order passed by the revisional authority compulsorily retiring the petitioner from service is quashed and set aside.

So far as back wages are concerned, in view of the order passed by the Court extracted hereinabove, no direction can be issued to the respondents to pay back wages or a part thereof. At the same time, however, looking to the nature of allegation levelled and proved against the petitioner, it cannot be said that a serious misconduct was committed by him. In the light of the charge proved against the petitioner, it is observed that the petitioner is at liberty to make an application to the respondents for awarding benefit of back wages or part thereof. The authorities will consider the prayer sympathetically, keeping in mind the charge proved against him and take appropriate decision.

In the result, the petition is partly allowed and the petitioner is ordered to be reinstated in service with continuity of service and all other consequential benefits except back wages. Petition is accordingly allowed. The consequential action will be taken by the authorities within three months from the date of receipt of the writ.

7th April, 2000 (C.K. Thakkar, J.)

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(apj)